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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,890	11/26/2003	Julian P. Trangsrud	20030331.ORI	2877
23595	7590	09/29/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			LAUX, JESSICA L	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/722,890	Applicant(s) TRANGSRUD, JULIAN P.	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 4-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgment is made of applicant's amendment filed 08/21/2006.

Accordingly claim 1 has been amended. An examination of claims 1-3 is presented below.

Claim Objections

Claim 1 is objected to because of the following informalities: a subcombination of a rebar spacer is initially claimed. However, the claim then recites a combination of the rebar spacer and the rebar (i.e. "a cradled rebar..."), which is inconsistent. The claim is being considered drawn to the subcombination. Appropriate correction is required.

Election/Restrictions

This application contains claims drawn to an invention nonelected with traverse in the office action dated 03/29/2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3635

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Sorkin (6684595).

In regards to claim 1: Sorkin discloses a rebar spacer (130, Figure 8; 10, Figure 2; 80, Figure 6) comprising, a clip (136, 20, 90) having a bottom portion with a semicircular "U" shaped rebar cradling portion (138, 32, 98), a pair of columns (140; 42,44;) one on either side of the semicircular "U" shaped rebar cradling portion and extending upward therefrom (Col. 7, lines 66-67), a cross portion (142,144; 34,36; 100) on each column extending toward the opposing column (Col. 7, line 67 – Col. 8, line 4), an arm (146,148; 52,56; 102) extending angularly downward from each cross portion toward the center of the semicircular "U" shaped rebar cradling portion and having an end at a distance approximately the diameter of the semicircular "U" shaped rebar cradling portion from the opposing wall of the semicircular "U" shaped rebar cradling portion, such that each end has a flat surface (where there is a planar surface at the distal end of the arm, Figures 2, 6 and 8) approximately perpendicular to a cradled rebar circumference (where rebar diameters have a large range from very small diameters to very large diameters, and the flat end surface would be perpendicular to the circumference of a select size of rebar diameters), to prevent an inserted rebar from being removed from the semicircular "U" shaped rebar cradling portion, a base (132 and 134; 12,24; 82,94) portion attached to the base of the clip for supporting the clip at a desired height.

Further, examiner points out that the limitation in the claim "to prevent an inserted rebar from being removed from the semicircular "U" shaped rebar cradling portion..." is

Art Unit: 3635

a capability statement in an article claim and is therefore not given patentable consideration. The prior art anticipates the claimed limitations when the reference is capable of performing the claimed function. As Sorkin is capable of prevent the rebar from being removed the claimed limitations are anticipated by Sorkin.

In regards to claim 2: The rebar spacer as in claim 1 above, wherein the base portion has a flat base (132; 12; 82), a left wall (Figures 2, 6 and 8) extending from the flat base to the bottom of the clip and center wall (Figures 2, 6 and 8) extending from the base to the bottom of the clip and a right wall (Figures 2, 6 and 8) extending from the flat base to the bottom of the clip.

In regards to claim 3: The rebar spacer as in claim 2 above, wherein the left and right walls are slanted inward from the edge of the flat base to the sides of the clip (Figures 2, 6 and 8), and the center wall is perpendicular to the flat base and the base of the clip (Figures 2, 6 and 8).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JL
09/26/2006



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